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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

NO.

JAMES CALLARI,

Petitioner

V.

STATE OF CONNECTICUT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF THE

STATE OF CONNECTICUT

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November 19, 1984

QUESTIONS PRESENTED

1. Whether the Connecticut Supreme Court's ruling that the defendant lacked standing to challenge the warrantless search of a home where he had been an overnight guest for several days violated his right to be free from unreasonable search and seizure.

2. Whether the Connecticut Supreme Court's ruling that the police were justified, under the plain view doctrine, in forcibly opening the defendant's locked suitcase, without a search warrant, denied the defendant freedom from unreasonable search and seizure.

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The petitioner, JAMES CALLARI, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Connecticut entered in this proceeding on JULY 24, 1984.

OPINION BELOW

The opinion of the Supreme Court of the State of Connecticut is reported at 194 Conn. 18 (1984) and appears in the Appendix hereto.

JURISDICTION

The opinion of the Supreme Court of the State of Connecticut was entered on July 24, 1984. A timely motion to reargue was not filed by the Office of the Public Defender. A motion for permission to file a motion to reargue was denied by that Court on September 26, 1984, and the petition for certiorari was filed within 60 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Whether the Connecticut Supreme

Court's ruling that the defendant lacked standing to challenge the warrantless search of a home where he had been an overnight guest for several days violated his right to be free from unreasonable search and seizure.

2. Whether the Connecticut Supreme Court's ruling that the police were justified, under the plain view doctrine, in forcibly opening the defendant's locked suitcase, without a search warrant, denied the defendant freedom from unreasonable search and seizure.

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT IV

The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants

shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT XIV

Section 1...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law....

STATUTORY PROVISIONS INVOLVED

CONNECTICUT GENERAL STATUTE, SEC. 19-480(a) provided, in pertinent part: PENALTY FOR ILLEGAL MANUFACTURE, DISTRIBUTION, SALE, PRESCRIPTION OR ADMINISTRATION BY NON-DRUG-DEPENDENT PERSON....

(b) Any person who manufactures, distributes, sells, prescribes, dispenses, compounds, transports with the intent to sell or dispense, possesses with the intent to sell or dispense, offers, gives or administers to another person...one kilogram or more of a cannabis-type substance..., and who is not at the time of such action a drug-dependent person, for the first offense shall be imprisoned not less than five years nor more than twenty years....The execution of the mandatory minimum sentence imposed by the provisions of this subsection shall not be suspended...

STATEMENT OF THE CASE

James Callari, the petitioner here, was convicted in the Connecticut Superior Court of possession of more than one kilogram of

marijuana.

On November 12, 1976, Mr. Callari was an overnight guest at the rural Connecticut home of Michael Brady. Mr. Callari, a resident of New Jersey, had been the social guest of the Brady's for one or two night previous and intended to stay another night. (10/6/78 Tr. pp. 252-255, 357-358) Mr. Callari and Michael Brady were arrested, in a red pick-up truck, a considerable distance from the Brady home, at 12:05 a.m. (10/6/78 Tr. pp. 202-206)

Subsequent to this arrest, in the early morning hours, several Connecticut State Troopers went to the Brady residence, and, without a warrant, gained entry. THe troopers searched throughout the residence; in an upstairs bedroom which had

been occupied by Mr. Callari, Hurley found a heavy, locked suitcase. Hurley claimed that he saw, in plain view, a plastic bag with plant material protruding from the locked suitcase. Hurley seized the suitcase and forcibly opened it with a screwdriver or a knife. Hurley claimed that after he forced the suitcase open, Mrs. Brady told him the suitcase and its contents of clothing and marijuana, belonged to the "guy from New Jersey." (9/15/78 Tr. pp. 212-215)

At the trial of Michael Brady, in early summer of 1978, the trial court suppressed all evidence seized against Michael Brady, on the grounds that the State police lacked the consent necessary to conduct a warrantless search of the Brady residence. At the Callari trial, in the fall of the

same year, the defendant, before a different Superior Court judge, moved to suppress the contents of the suitcase. The trial court ruled, contrary to the ruling in the Brady trial, that the consent was valid. (10/6/78 Tr. pp. 398)

Callari was convicted and sentenced to a five year mandatory minimum term of imprisonment.

Callari appealed this conviction to the Connecticut Supreme Court claiming that the doctrine of collateral estoppel should have precluded the Callari trial judge from upholding the validity of the consent to search. He further claimed that the warrantless seizure and opening of the locked suitcase violated his rights under the Fourth Amendment.

The Connecticut Supreme Court found no

error in the trial judge's refusal to suppress the seized marijuana and affirmed Callari's conviction. That court ruled that Callari, as a transient, overnight, social guest in the Brady home, had no legitimate expectation of privacy, and thus had no standing to challenge the warrantless search. That court further held that the forcible warrantless opening of the locked suitcase was proper under the plain view doctrine.

REASONS FOR GRANTING THE WRIT

I

THE DECISION OF THE THIS COURT IN PAYTON V. NEW YORK, 451 U.S. 204 (1981) HAVE LEFT UNRESOLVED THE CRUCIAL FOURTH AMENDMENT QUESTION OF WHETHER AN OVERNIGHT GUEST IN A PRIVATE RESIDENCE ENJOYS A REASONABLE EXPECTATION OF PRIVACY AND THUS THE SAME RIGHTS AS THE HOST HOME OWNER TO BE FREE FROM WARRANTLESS ENTRIES, SEARCHES AND SEIZURES

In Payton v. New York, 451 U.S. 204 (1981) and in the case decided

simultaneously, Riddick v. New York, this Court unequivocally held that warrantless searches and seizures within a home are presumptively invalid. This holding was expanded this last term in Welsh v. Wisconsin, U.S. , 104 S. Ct. 2091 (1984). Similarly, in Steagald v.United States, 451 U.S. 204 (1981) this Court held that the police, even when armed with a valid arrest warrant, may not enter the home of a third party, to search for the individaual named in the warrant, unless the warrant permits entry of the third party dwelling.

This Court, has not to date, however, decided the crucial question, of whether a person, who is a transient, overnight guest in another's home, has a reasonable expectation of privacy for himself or his belongings in that home. In United States

v. Bulman, 667 F.2d 1374 (11th Cir. 1982), the Court of Appeals held that a guest in a motel room, had under the rule of Payton, a reasonable expectation of privacy in that room even though he was not the owner, but a transient occupant.

In deciding this case, the Connecticut Supreme Court relied on United States v. Payner, 447 U.S. 727 (1980). This reliance is totally misplaced. In Payner, this Court held that Payner lacked standing to challenge the illegal seizure of documents taken from the briefcase of a bank officer. Rakas v. Illinois, 429 U.S. 128 (1978). It is axiomatic, that only one whose own constitutional rights have been violated may challenge a seizure.

In the case at bar, Mr. Callari, had standing to challenge the search of the

Brady residence because he was a guest in that home. He shares whatever legitimate expectation of privacy, the owner possesses and thus has standing to challenge the entry and the subsequent search. United States v. Salvucci, 448 U.S. 83 (1980); Rawlings v. Kentucky, 448 U.S. 98 (1980).

Payton and Steagald have left this crucial question unresolved and the case at bar cries out for resolution of this all important issue.

II

THE DECISION OF THE CONNECTICUT SUPREME COURT DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN UNITED STATES V. CHADWICK, 433 U.S. 1 (1977)

In the case at bar the Connecticut Supreme Court ruled that the warrantless, forcible opening of the defendant's locked suitcase by the Connecticut State Police was justified under the plain view doctrine. Coolidge v. New Hampshire, 403 U.S. 443 (1971)

In so ruling, the Connecticut Supreme Court ignored the holding of this Court in United States v. Chadwick, 443 U.S. 1. (1977). The Connecticut court relied in so holding on Texas v. Brown, 460 U.S. 730 (1984) where this Court ruled that the police may seize containers in plain view.

The Connecticut court, however, completely ignored the cogent reasoning of Justice Stevens in his concurrence, that while the container may be temporarily seized without a warrant, "[i]t does not follow that the container may be opened on the spot."

This Court has always recognized the special privacy interests which an individual may possess in luggage. United States v. Chadwick, supra; Arkansas v. Sanders, 442 U.S. 753 (1979); United States v. Place, 462 U.S. , 103 S.Ct 2637 (1983); United States v. Ross, 456 U.S. 798 (1982). Similarly, this Court has ruled that sealed containers lawfully in the possession of the government do not justify the opening of the containers without a warrant, Walter v. United States, 447 U.S. 649 (1980) even when it is apparent that the

container may contain contraband. United States v. Chadwick, supra.

It is, of course, true that the contents of a container may be inferred from its outward appearance (as in this case, a plastic bag in which there was a green plant material). Nevertheless, the plain view appearance of contraband does not justify a forcible, warrantless search of luggage.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of the State of Connecticut.

Respectfully submitted:

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